

Calendar No. 322

108TH CONGRESS
1ST SESSION**S. 1743**

To permit reviews of criminal records of applicants for private security officer employment.

IN THE SENATE OF THE UNITED STATES

OCTOBER 16, 2003

Mr. LEVIN (for himself, Mr. ALEXANDER, Mr. SCHUMER, Mr. McCONNELL, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 23, 2003

Reported by Mr. HATCH, without amendment

A BILL

To permit reviews of criminal records of applicants for private security officer employment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Security Offi-
5 cer Employment Authorization Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) employment of private security officers in
2 the United States is growing rapidly;

3 (2) private security officers function as an ad-
4 junct to, but not a replacement for, public law en-
5 forcement by helping to reduce and prevent crime;

6 (3) such private security officers protect indi-
7 viduals, property, and proprietary information, and
8 provide protection to such diverse operations as
9 banks, hospitals, research and development centers,
10 manufacturing facilities, defense and aerospace con-
11 tractors, high technology businesses, nuclear power
12 plants, chemical companies, oil and gas refineries,
13 airports, communication facilities and operations, of-
14 fice complexes, schools, residential properties, apart-
15 ment complexes, gated communities, and others;

16 (4) sworn law enforcement officers provide sig-
17 nificant services to the citizens of the United States
18 in its public areas, and are supplemented by private
19 security officers;

20 (5) the threat of additional terrorist attacks re-
21 quires cooperation between public and private sec-
22 tors and demands professional, reliable, and respon-
23 sible security officers for the protection of people, fa-
24 cilities, and institutions;

1 (6) the trend in the Nation toward growth in
2 such security services has accelerated rapidly;

3 (7) such growth makes available more public
4 sector law enforcement officers to combat serious
5 and violent crimes, including terrorism;

6 (8) the American public deserves the employ-
7 ment of qualified, well-trained private security per-
8 sonnel as an adjunct to sworn law enforcement offi-
9 cers; and

10 (9) private security officers and applicants for
11 private security officer positions should be thor-
12 oughly screened and trained.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **EMPLOYEE.**—The term “employee” includes
16 both a current employee and an applicant for em-
17 ployment as a private security officer.

18 (2) **AUTHORIZED EMPLOYER.**—The term “au-
19 thorized employer” means any person that—

20 (A) employs private security officers; and

21 (B) is authorized by regulations promul-
22 gated by the Attorney General to request a
23 criminal history record information search of an
24 employee through a State identification bureau
25 pursuant to this section.

1 (3) PRIVATE SECURITY OFFICER.— The term
 2 “private security officer”—

3 (A) means an individual other than an em-
 4 ployee of a Federal, State, or local government,
 5 whose primary duty is to perform security serv-
 6 ices, full- or part-time, for consideration, wheth-
 7 er armed or unarmed and in uniform or plain
 8 clothes (except for services excluded from cov-
 9 erage under this Act if the Attorney General
 10 determines by regulation that such exclusion
 11 would serve the public interest); but

12 (B) does not include—

13 (i) employees whose duties are pri-
 14 marily internal audit or credit functions;

15 (ii) employees of electronic security
 16 system companies acting as technicians or
 17 monitors; or

18 (iii) employees whose duties primarily
 19 involve the secure movement of prisoners.

20 (4) SECURITY SERVICES.—The term “security
 21 services” means acts to protect people or property as
 22 defined by regulations promulgated by the Attorney
 23 General.

24 (5) STATE IDENTIFICATION BUREAU.—The
 25 term “State identification bureau” means the State

1 entity designated by the Attorney General for the
2 submission and receipt of criminal history record in-
3 formation.

4 **SEC. 4. CRIMINAL HISTORY RECORD INFORMATION**
5 **SEARCH.**

6 (a) IN GENERAL.—

7 (1) SUBMISSION OF FINGERPRINTS.—An au-
8 thorized employer may submit to the State identi-
9 fication bureau of a participating State, fingerprints
10 or other means of positive identification, as deter-
11 mined by the Attorney General, of an employee of
12 such employer for purposes of a criminal history
13 record information search pursuant to this Act.

14 (2) EMPLOYEE RIGHTS.—

15 (A) PERMISSION.—An authorized employer
16 shall obtain written consent from an employee
17 to submit to the State identification bureau of
18 a participating State the request to search the
19 criminal history record information of the em-
20 ployee under this Act.

21 (B) ACCESS.—An authorized employer
22 shall provide to the employee confidential access
23 to any information relating to the employee re-
24 ceived by the authorized employer pursuant to
25 this Act.

1 (3) PROVIDING INFORMATION TO THE STATE
2 IDENTIFICATION BUREAU.—Upon receipt of a re-
3 quest for a criminal history record information
4 search from an authorized employer pursuant to this
5 Act, submitted through the State identification bu-
6 reau of a participating State, the Attorney General
7 shall—

8 (A) search the appropriate records of the
9 Criminal Justice Information Services Division
10 of the Federal Bureau of Investigation; and

11 (B) promptly provide any resulting identi-
12 fication and criminal history record information
13 to the submitting State identification bureau re-
14 questing the information.

15 (4) USE OF INFORMATION.—

16 (A) IN GENERAL.—Upon receipt of the
17 criminal history record information from the
18 Attorney General by the State identification bu-
19 reau, the information shall be used only as pro-
20 vided in subparagraph (B).

21 (B) TERMS.—In the case of—

22 (i) a participating State that has no
23 State standards for qualification to be a
24 private security officer, the State shall no-

1 tify an authorized employer as to the fact
2 of whether an employee has been—

3 (I) convicted of a felony, an of-
4 fense involving dishonesty or a false
5 statement if the conviction occurred
6 during the previous 10 years, or an
7 offense involving the use or attempted
8 use of physical force against the per-
9 son of another if the conviction oc-
10 curred during the previous 10 years;
11 or

12 (II) charged with a criminal fel-
13 ony for which there has been no reso-
14 lution during the preceding 365 days;
15 or

16 (ii) a participating State that has
17 State standards for qualification to be a
18 private security officer, the State shall use
19 the information received pursuant to this
20 Act in applying the State standards and
21 shall only notify the employer of the re-
22 sults of the application of the State stand-
23 ards.

24 (5) FREQUENCY OF REQUESTS.—An authorized
25 employer may request a criminal history record in-

1 formation search for an employee only once every 12
2 months of continuous employment by that employee
3 unless the authorized employer has good cause to
4 submit additional requests.

5 (b) REGULATIONS.—Not later than 180 days after
6 the date of enactment of this Act, the Attorney General
7 shall issue such final or interim final regulations as may
8 be necessary to carry out this Act, including—

9 (1) measures relating to the security, confiden-
10 tiality, accuracy, use, submission, dissemination, de-
11 struction of information and audits, and record-
12 keeping;

13 (2) standards for qualification as an authorized
14 employer; and

15 (3) the imposition of reasonable fees necessary
16 for conducting the background checks.

17 (c) CRIMINAL PENALTIES FOR USE OF INFORMA-
18 TION.—Whoever knowingly and intentionally uses any in-
19 formation obtained pursuant to this Act other than for
20 the purpose of determining the suitability of an individual
21 for employment as a private security officer shall be fined
22 under title 18, United States Code, or imprisoned for not
23 more than 2 years, or both.

24 (d) USER FEES.—

1 (1) IN GENERAL.—The Director of the Federal
2 Bureau of Investigation may—

3 (A) collect fees to process background
4 checks provided for by this Act; and

5 (B) establish such fees at a level to include
6 an additional amount to defray expenses for the
7 automation of fingerprint identification and
8 criminal justice information services and associ-
9 ated costs.

10 (2) LIMITATIONS.—Any fee collected under this
11 subsection—

12 (A) shall, consistent with Public Law 101–
13 515 and Public Law 104–99, be credited to the
14 appropriation to be used for salaries and other
15 expenses incurred through providing the serv-
16 ices described in such Public Laws and in para-
17 graph (1);

18 (B) shall be available for expenditure only
19 to pay the costs of such activities and services;
20 and

21 (C) shall remain available until expended.

22 (3) STATE COSTS.—Nothing in this Act shall be
23 construed as restricting the right of a State to as-
24 sess a reasonable fee on an authorized employer for
25 the costs to the State of administering this Act.

1 (e) STATE OPT OUT.—A State may decline to partici-
2 pate in the background check system authorized by this
3 Act by enacting a law or issuing an order by the Governor
4 (if consistent with State law) providing that the State is
5 declining to participate pursuant to this subsection.

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